

Rules

RULE

Department of Agriculture and Forestry Agricultural Commodities Commission

Agricultural Commodity Dealer and Warehouse Law (LAC 7:VII.Chapter 3 and XXVII.Chapter 1)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:3405, the Louisiana Agricultural Commodities Commission (commission) has amended the Agricultural Commodity Dealer and Warehouse Law in order to make technical corrections, update language and fees to meet the requirements established in the revisions of Act 767 enacted in the 2010 Regular Legislative Session, adopt new regulations that pertain to the use of Electronic Warehouse Receipts as well as adopt fees for the testing and sampling of aflatoxin for corn.

Act No. 767 of the 2010 Regular Legislative Session adopted, amended and reenacted several sections of R.S. 3:3401-3425 of the Agricultural Commodity Dealer and Warehouse Law pertaining to the seizure of facilities, grain dealer license exams, moisture meter devices as well as technical corrections. The law also repeals obsolete provisions related to certification requirements for grain sampling, licensure requirements for weighmasters, policies for sampling and grading grain and design approval for scale tickets.

These Rules are enabled by R.S. 3:3401 -3425.

Title 7

AGRICULTURE AND ANIMALS

Part VII. Dealers in Farm Products

Chapter 3. Cotton Buyers

§301. Application

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:703 and R.S. 3:702.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 1:473 (November 1975), repealed by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:494 (February 2011).

§303. Bonds

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:703 and R.S. 3:702.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 1:474 (November 1975), repealed by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:494 (February 2011).

§305. Fees

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:703.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 1:474 (November 1975), repealed by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:494 (February 2011).

§307. Term of License; Renewal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:702 and R.S. 3:703.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 1:474 (November 1975), repealed by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:494 (February 2011).

§309. Posting of License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:702 and R.S. 3:703.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 1:474 (November 1975), repealed by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:494 (February 2011).

§311. Suspension and Revocation of License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:703.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 1:474 (November 1975), repealed by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:494 (February 2011).

§313. Contracts

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:703.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 1:474 (November 1975), repealed by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:494 (February 2011).

Part XXVII. Agricultural Commodity Dealer and Warehouse Law

Chapter 1. Louisiana Agricultural Commodities Commission Subchapter A. General Provisions

§101. Definitions

Adjudicatory Proceeding—an open public hearing by the commission to determine whether violations of R.S. 3401-3425 or the regulations contained in this Part have occurred. Such proceedings are conducted in accordance with the Louisiana Administrative Procedure Act (R.S. 49:950 et seq.).

Advance—a partial payment against total proceeds due to a seller.

Agricultural Commodities—cotton, all agricultural products commonly classed as grain (rice, corn, wheat, oats, rye, soybeans, barley, and grain sorghum), and any other agricultural commodity which the commission may declare to be an agricultural commodity subject to regulation under R.S. 3:3401-3425.

Applicant—any person making application for a license to engage in any of the activities regulated under R.S. 3:3401-3425 or anyone who requests official grain inspection services and/or grain weighing services of the department.

Audited [with respect to a financial statement]—a financial statement prepared by an independent certified

public accountant, the basis of which financial statement is the accountant's independent examination of the books and records of the business entity covered by the financial statement.

Authentic Act—a statement executed before a notary public and at least two witnesses.

Authorized Agent—with reference to the authorized agent of a warehouse or grain dealer, any representative thereof whose name has been filed with the commission as such. A person whose name has not been filed with the commission as an authorized agent will not be recognized by the commission as entitled to act for or on behalf of a warehouse or grain dealer.

Bid Contract—an agreement between a producer and a purchaser under which the purchaser examines samples of rice and extends to the producer an offer to purchase the rice at a price based on the quality of the sample.

Capacity—all of the area of a licensee which is in any kind of protected enclosure.

CCC—Commodity Credit Corporation.

Central Filing System (CFS)—an electronic system operated and maintained by a provider where information relating to electronic warehouse receipts is recorded and maintained in a confidential and secure fashion independent of any outside influence or bias in action or appearance, and that is authorized by the director.

Certified—with respect to the financial statements required under the Act R.S. 3:3401-3425, a written statement signed by the independent certified public accountant preparing the financial statement.

Commission—the Louisiana Agricultural Commodities Commission.

Commissioner—the Louisiana Commissioner of Agriculture and Forestry.

Compilation—with respect to a financial statement, a financial statement prepared by an independent certified public accountant solely on the basis of representations of the management of the business entity covered by the financial statement.

Confirmation Date—the date on which the bid contract was confirmed.

Confirmed—the bid contract has been agreed to by both parties. A bid contract is confirmed when the producer and the purchaser agree to the quantity and price of the rice to be sold.

Cotton Agent—every person, firm, corporation, association, or other legal entity which purchases or contracts to purchase cotton grown or to be grown by producers in this state for or on behalf of a cotton merchant and which is required to be a party to a notarized written agency agreement.

Cotton Merchant—every person, firm, corporation, association, or other legal entity which purchases or contracts to purchase, either directly or through a cotton agent, cotton grown or to be grown by producers in this state.

Current Financial Statement—a financial statement containing all of the documents listed in §107.B of this Part and presenting financial position as of the close of the applicant's or licensee's most recent fiscal year.

Deferred Price Commodities—commodities purchased by a grain dealer from a producer for which the sale price will

be established after date of the initial agreement between the parties. The agreement between the parties covering deferred price commodities shall be in writing. The term deferred price commodities is the same as the other following terms in general usage: price later, no price established (NPE), delayed price, basis contract, future settlement delivery, or contract for purchase.

Delivery Date—the date on which the purchaser is required to take delivery of the rice, either under the provisions of Subchapter O of this Chapter or under the provisions of a written agreement between the producer and the purchaser.

Department—the Louisiana Department of Agriculture and Forestry.

Director—the employee of the commission who is responsible for implementing the policies of the commission and performing the administrative responsibilities delegated to the commissioner under R.S. 3:3401-3425.

Electronic Warehouse Receipt (EWR)—a receipt that is issued or transmitted in the form of an electronic document.

Farm Products—products employed directly in the cultivation, production, or harvesting of any agricultural commodities or containers for agricultural commodities or farm products.

Fee—any charge imposed by a warehouse, directly or indirectly, for care of agricultural commodities belonging to any person other than the warehouse owner, including but not limited to base price adjustments, storage, handling, dockage, commission, drying, and/or conditioning fees or any fees as listed on the latest approved schedule of fees (§128.D of this Part) for official grain inspections and weighing services provided by the department.

Field Warehouse—a warehouse operated by a management organization under a contractual agreement between the management organization and the owner of the warehouse.

First Point of Sale—the initial time when title to agricultural commodities or farm products passes from a seller to a buyer.

Grain—corn, wheat, oats, rye, soybeans, barley, and grain sorghum.

Grain Dealer—any person who purchases agricultural commodities from producers, sells agricultural commodities for producers, or represents producers in the purchase or sale of agricultural commodities. The term does not include producers who purchase grain commodities for their own use as feed or seed.

Hedge [with respect to a contract to sell commodities]—a secondary contract to buy commodities to protect the obligations incurred with respect to the contract to sell. Hedge, with respect to a contract to buy commodities, means a secondary contract to sell commodities to protect the obligations incurred with respect to the contract to buy.

Identity Preserve—

1. instances in which a warehouse preserves the separate identities of different lots of agricultural commodities; or

2. instances in which a warehouse preserves the separate identities of agricultural commodities belonging to different owners.

Independent Certified Public Accountant—a person who has completed all requirements established by the American

Institute of Certified Public Accountants and the state Society of Louisiana Certified Public Accountants. To be recognized as an independent public accountant, the accountant, members of his immediate family, and his accounting business associates shall be totally free of any obligation to or interest in the client, its management, or its owners.

Licensed Capacity—the warehouse area which is bonded for the storage of agricultural commodities or farm products belonging to a person other than the owner of the warehouse.

Licensee—any person holding a license as a warehouse, cotton merchant or grain dealer issued by the commission.

Open or Open Position—the grain dealer's contracts for purchase or sale of agricultural commodities which are unhedged.

Person—any individual, partnership, company, firm, association, corporation, cooperative association, or any other legal entity engaged in any of the activities regulated under R.S. 3:3401-3425.

Producer—the owner, tenant, lessee, or operator of land within this state who has an interest in or receives all or any part of the proceeds from the sale of agricultural commodities produced thereon.

Purchaser—any person who purchases rice from a producer under a bid contract.

Review (with respect to a financial statement)—a financial statement prepared by an independent certified public accountant, in the preparation of which financial statement the accountant makes such inquiries of management and performs such analyses and/or comparisons as may appear appropriate to the accountant.

Risk Position—the loss potential to the grain dealer resulting from bringing its open position to market.

Scale Ticket—the document issued to a producer when agricultural commodities are delivered to a warehouse or grain dealer.

Spot or Spot Sale—a transaction where title to agricultural commodities passes from the producer to the buyer on the day of delivery, in which transaction the producer is paid promptly at the market price established on the day of delivery.

Storage—the physical possession by a warehouse, in any manner and/or under any type of fee arrangement, of agricultural commodities belonging to any person other than the owner of the warehouse. The term storage does not apply to a transaction in which title passes from the seller to the buyer upon delivery.

Warehouse—any building, structure, or any other protected enclosure required to be licensed by the commission in which agricultural commodities or farm products are stored for the public for a fee. The term includes facilities which commingle commodities belonging to different owners and facilities which preserve the separate identities of different lots of agricultural commodities.

Warehouse Operator—any person or other entity operating a warehouse.

Warehouse Receipts—may be paper or electronic and may be negotiable or non-negotiable and are defined as follows.

1. **Non-Negotiable Warehouse Receipts**—written evidence of the deposit of agricultural commodities or farm products in a warehouse, which cannot be sold or traded by the holder and cannot be used to secure a loan.

2. **Negotiable Warehouse Receipts**—written evidence of the deposit of agricultural commodities or farm products in a warehouse, which can be sold or traded by the holder and can be used to secure a loan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3402 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:284 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:287 (May 1986), LR 19:1300 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:624 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:494 (February 2011).

§103. Administration of the Affairs of the Commission

A. The officers of the commission shall be a chairman and a vice-chairman, who shall serve for terms concurrent with the commissioner, but may be elected for an indefinite number of terms.

B. After the initial election of officers, the chairman and vice-chairman shall be elected at the commission's regular meeting during the first quarter of each year.

C. In the absence of the chairman at any meeting of the commission, the vice-chairman shall preside.

D. The commission shall hold at least one regular meeting during each quarter of the year, but may meet more frequently upon the call of the chairman.

E. Meetings of the commission shall normally be held in its domicile but may be held at other locations upon the determination of the chairman or the will of the commission.

F. The quorum of the commission is five members.

G. An affirmative vote of a minimum of five members shall be required for the adoption of any motion.

H. There shall be no voting by proxy.

I. Rules and regulations of the commission, and amendments thereto, shall be noticed, adopted, and promulgated as required by the Louisiana Administrative Procedure Act.

J. The chairman shall designate a hearing officer, who may or may not be a member of the commission, to preside at all adjudicatory proceedings of the commission. The chairman may, if he so desires, serve as hearing officer at any adjudicatory proceeding.

K. The commission shall serve as the hearing body in all adjudicatory proceedings and shall make the final determination with regard to the disposition of all matters coming to adjudication.

L. The director shall provide clerical and other support services as may be required by the commission and shall maintain and distribute appropriate minute records of the commission.

M. No member of the commission shall participate in any discussion or vote concerning any matter before the commission in which such member has a personal or commercial interest.

N. No member of the commission or the staff shall disclose any financial information pertaining to any licensee or applicant for license.

O. The commission may, from time to time, delegate any of its responsibilities to subcommittees appointed by the chairman. Such subcommittees may perform such specific

duties as may be assigned by the chairman but all actions of such subcommittees shall be subject to ratification by the full commission.

P. Appointed members of the commission shall be entitled to receive a per diem of \$40 and to be reimbursed for mileage expenses in accordance with the same travel regulations applying to state employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Agricultural Commodities Commission, LR 9:287 (May 1983), amended 12:287 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:624 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:494 (February 2011).

§105. Agricultural Commodities and Other Farm

Products Regulated by the Commission

A. The following agricultural commodities shall be regulated by the commission at all times:

1. rice;
2. rough rice;
3. all agricultural commodities commonly classed as grain; including:
 - a. wheat;
 - b. corn;
 - c. oats;
 - d. rye;
 - e. soybeans;
 - f. barley;
 - g. grain sorghum;
4. cotton.

B. Whenever commission warehouse receipts are issued to cover any of the following agricultural commodities, the following agricultural commodities shall be regulated by the commission:

1. peppers;
2. oils (vegetables and mineral);
3. pecans;
4. molasses and/or syrup;
5. any canned and/or frozen vegetables/fruits/juices.

C. Commodities and farm products enumerated in §105.B of this Part shall be subject to all requirements set forth in the regulations contained in this Part whenever commission warehouse receipts are issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:288 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1300 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:624 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:497 (February 2011).

Subchapter B. Application for Warehouse, Grain Dealer and Cotton Merchant Licenses

§107. Application for License (Initial and Renewal); Time for Filing; Contents; Fees; Style of Document

A. Applications for renewal of warehouse, cotton merchant and grain dealer licenses shall be received no later

than April 30 of each year. Applications for initial license may be filed at any time during the year. For both initial and renewal licenses, the following information shall be furnished on the application form provided by the commission:

1. type of application:
 - a. warehouse;
 - b. grain dealer;
 - c. cotton merchant;
2. date of submission;
3. nature of application:
 - a. initial application;
 - b. renewal application;
4. nature of applicant's business:
 - a. sole proprietorship;
 - b. partnership;
 - c. corporation;
 - d. association;
 - e. agricultural cooperative;
 - f. other;
5. name under which the business will operate;
6. address of the principal office of the business, either in-state or out-of-state, including mailing address, physical location, and telephone number;
7. name of the person in charge (e.g., manager, warehouse operator, principal dealer, etc.) and his residence address and telephone number;
8. if a partnership, the names, addresses, and interests of all partners;
9. if a corporation, the names and addresses of all officers;
10. if an association, including an agricultural cooperative, the names and addresses of all members of the board of directors;
11. name and address of the owner of the business, if not shown under §107.A.7, 8, and 9 of this Part;
12. status of the facility in which the business will be operated:
 - a. owned by applicant;
 - b. leased by applicant (short term or long term);
 - c. rented by applicant and name and address of owner;
 - d. other;
13. type of agricultural commodities that the applicant will store or trade;
14. for all business locations to be operated under one license:
 - a. number of locations;
 - b. address of each location;
 - c. total capacity;
 - d. capacity of each location to be licensed, if different from total capacity;
 - e. name of person in charge of each facility;
15. bond status of the applicant:
 - a. amount of bond posted;
 - b. name and address of bonding company;
 - c. period for which bond written;
16. insurance of applicant:
 - a. amount of provisional stock insurance carried;
 - b. name and address of carrier;
 - c. term of policy;

d. physical address of each location covered by stock insurance;

17. names of all authorized agents;

18. a statement that the applicant will abide by the requirements of R.S. 3:3401-3425 and the regulations contained in this Part;

19. a certified statement that all representations contained in the application and in all required attachments are true and correct;

20. grain dealer applicants only:

a. name of person(s) on grain dealer's staff who is certified as a grain sampler and/or grader;

21. warehouse applicant only:

a. if utilizing paper warehouse receipts, three signature cards, on card forms provided by the commission, completed by each person listed as an authorized agent of the applicant, together with a resolution from the board of directors naming each person, other than the owner or president, whose name is listed as an authorized agent;

b. a copy of the warehouse's current schedule of tariffs or charges;

22. cotton merchant applicants only:

a. name and written notarized agency agreements of cotton agents buying cotton in the state;

23. grain dealers and cotton merchant applicants only:

a. aggregate amount paid to producers during applicant's most recent fiscal year;

24. application for acceptance into the self-insurance fund, if applicable.

B. For initial licensure under R.S. 3:3401-3425, each applicant shall provide a financial statement as of the close of the applicant's most recent fiscal year.

1. The financial statement shall be prepared by an accountant who is not a full-time employee of the applicant and who meets at least one of the following:

a. a certified public accountant;

b. a graduate of an accredited four-year college or university with a degree in accounting; or

c. has passed the examination administered by the National Society of Accountants.

2. The financial statement presented for initial licensure under R.S. 3:3401-3425 may be any of the following:

a. compilation;

b. review;

c. audited.

3. The financial statement shall contain:

a. a balance sheet;

b. a statement of income (profit and loss);

c. a statement of retained earnings;

d. a statement of changes in financial position;

e. a certificate by the applicant or the chief executive officer of the applicant, in the form of an authentic act, that the financial statement accurately reflects the financial condition of the applicant for the period covered in the financial statement;

f. whenever the certificate required under §107.B.3.c of this Part is executed by a representative of the applicant other than the owner or president, a resolution of the board of directors authorizing such representative to execute the certificate is required.

4. Multi-state and/or multi-national corporations with subsidiary divisions located in Louisiana shall either:

a. submit a fully audited financial statement showing the position of the parent company, together with sufficient financial information pertaining to the Louisiana subsidiary to reasonably reflect the corporation's ability to satisfy all obligations to Louisiana producers; or

b. pay all expenses necessary for performance of a full audit, at one or more locations where pertinent corporation records are maintained, by the department's Central Audit Committee.

5. The financial statement shall be prepared and signed by an accountant, as defined in §107.B of this Part, and shall be presented in accordance with generally accepted accounting principles.

a. Financial statements shall include contracts covering commodities which have not been delivered. Contracts covering commodities which have not been delivered to the licensee or applicant shall be brought to market in the financial statement. Contracts on commodities which have not been delivered to the licensee or applicant may be made a part of the financial statement by means of a footnote to the statement.

b. Fixed assets shall be presented at cost on financial statements.

6. Only one financial statement shall be required for a chain of warehouses covered by a single warehouse license.

C. Each licensee shall file a financial statement conforming to the requirements of §107.B of this Part within 90 days after the close of the licensee's fiscal year.

D. Each applicant shall also provide the following information, in addition to completing the required application form and providing a financial statement:

1. evidence of bond or alternate security which meets the requirements set forth in §115 of this Part (warehouse license applicants), §123.G of this Part (grain dealer license applicants) or R.S. 3:3411.1 (cotton merchant license applicants);

2. evidence of provisional stock insurance which meets the requirements set forth in §117 of this Part (warehouses) or §123 of this Part (grain dealers);

3. copy of Scale Ticket. Applicants who do not use scale tickets in their business operations shall certify to that effect in lieu of filing a scale ticket;

4. applicants who apply under corporate status shall provide evidence of compliance with Louisiana's Corporation Laws.

E. A fee of \$200, as required by R.S. 3:3401-3425, shall accompany each application at the time of filing. This fee is non-refundable, whether or not the license is granted.

F. All licenses shall signify on the face the following information:

1. name and address of licensee;

2. if a cotton merchant or grain dealer, the location of the principal place of business;

3. if a warehouse, the licensed capacity of the location covered by the license;

4. amount of bond;

5. term of license.

G. Approved licenses shall be issued in the name of the commission and signed by the commissioner.

H. A late fee of \$50 may be assessed per application per business day when the application is received after April 30.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3408, R.S. 3:3409, R.S. 3:3410, R.S. 3:3411 and R.S. 3:3411.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:289 (May 1983), amended LR 10:75 (February 1984), LR 11:229 (March 1985), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:287 (May 1986), LR 19:1300 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:624 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:497 (February 2011).

§109. Grounds for Refusal to Issue or Renew a Warehouse, Cotton Merchant, or Grain Dealer License

A. The commission may refuse to issue or renew a warehouse, cotton merchant, or grain dealer license in any of the following circumstances:

1. the applicant cannot demonstrate to the satisfaction of the commission that he is competent to operate the business for which the license is sought;

2. the applicant cannot demonstrate a \$100,000 net worth;

3. the applicant has failed to provide all of the information required in the application for licensure;

4. the applicant has previously refused to permit audit of his records;

5. the applicant has not or cannot secure the bond required by R.S. 3:3401-3425;

6. the applicant has not or cannot secure the insurance required by R.S. 3:3401-3425;

7. if an applicant for a warehouse license: the facilities in which the business will be operated are not suitable for storage of agricultural commodities;

8. if an applicant for a grain dealer license: the applicant has failed to hedge its obligations to producers as required by R.S. 3:3401-3425 and the rules contained in this Part.

B. Any cotton merchant, warehouse or grain dealer whose application for license is refused by the commission may appeal the decision of the commission under the Administrative Procedure Act or through the judicial process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3412.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:293 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:287 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:499 (February 2011).

Subchapter C. Warehouse Licenses

§111. Requirements Applicable to All Warehouses

A. No person shall operate a warehouse subject to regulation under R.S. 3:3401-3425 unless licensed by the commission or under the U.S. Warehouse Act. The following types of warehouses are specifically defined as warehouses subject to regulation under R.S. 3:3401-3425:

1. any facility offering storage as defined in §101 of this Part;

2. any facility which issues state warehouse receipts covering agricultural commodities or farm products;

3. all field warehouses. The management organization operating a field warehouse shall secure a separate license for each location. Field warehouses shall be licensed in the same manner as any other warehouses and regulations governing other warehouses shall apply equally to field warehouses.

B. Warehouses licensed under the U.S. Warehouse Act are not required to submit the application required under R.S. 3:3401-3425 and are not subject to all other requirements of R.S. 3:3401-3425 unless licensed under the provisions of R.S. 3:3401-3425.

C. No warehouse, whether licensed under R.S. 3:3401-3425 or the U.S. Warehouse Act, shall buy or sell agricultural commodities for producers unless such warehouse is also licensed by the commission as a grain dealer.

D. A single business entity which operates warehouse facilities at more than one location may be covered by one license. In such instances, the applicant shall provide separate capacity and personnel information for each location but may submit a consolidated financial statement covering all locations.

E. When two or more businesses which are separate legal entities, even though owned and/or operated by the same individual or the same legal entity, are operated at one or more physical locations, each separate legal entity shall obtain a separate license.

F. Each license is personal to the holder thereof and may not be transferred or assigned to another for any purpose or any period of time.

G. Licenses issued by the commission shall be consecutively numbered and the number shall include a fiscal year designation.

H. All warehouse licenses issued by the commission shall expire on June 30 following the date of issue.

I. For initial and continuing licensure, the facility shall meet all requirements of §113 of this Part.

J. The warehouse shall meet all bonding and insurance requirements set forth in §§115 and 117 of this Part prior to issuance of the license. Failure to maintain the required bond and insurance in full force and effect for the license period shall subject the licensee to revocation of its license.

K. The person in charge of each warehouse unit shall possess the following qualifications:

1. be of legal age;

2. demonstrate the following:

- a. knowledge of the practical facts of keeping accurate records regarding the storage of agricultural commodities;

- b. knowledge of proper pest control and fumigation procedures.

L. Provisions Relative to the Schedule of Tariffs or Charges

1. Each warehouse shall file its current tariff with the commission for the commission's approval as to form.

2. Whenever there is any change in any warehouse's tariff, the new tariff shall be filed with the commission prior to implementation of any changes.

3. The director shall note on each warehouse's tariff the fact of its receipt by the commission. Upon the warehouse's receipt of the tariff bearing the director's notation, the warehouse shall post the copy bearing the director's signature in a conspicuous location at the warehouse.

4. Each tariff shall indicate whether charges are made on the basis of barrels, bushels, or hundredweights.

5. The tariff shall contain all fees routinely charged to depositors.

6. The tariffs or charges shall be the same for the same class of services to each customer of the warehouse.

M. Each warehouse shall maintain a daily inventory report on forms provided by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3409, R.S. 3:3410 and R.S. 3:3420.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:294 (May 1983), amended LR 11:229 (March 1985), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1301 (October 1993), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:499 (February 2011).

§113. Standards for Approval of Facilities for Storage of Agricultural Commodities

A. The building shall be of sound construction, in good physical condition, and suitable for storage of the agricultural commodities to be stored therein.

B. The building shall be weathertight so as to protect the commodities stored in it from the elements at all times.

C. The building and the surroundings shall be reasonably clean and free of debris of any kind.

D. There shall be safe ingress and egress to all storage units.

E. Storage units having entrances more than 20 feet above ground or floor level shall be equipped with a safe and adequate lift or ladder.

F. All catwalks shall be equipped with railings, shall be structurally sound, and shall be kept free of all grain or other matter which might endanger human life.

G. The facility shall maintain reasonable provisions for rodent and insect control.

H. Commodities or farm products stored in containers rather than in bulk shall be separated by an aisle of sufficient width to permit passage for inspection.

I. When different agricultural commodities are stored in the same facility in bulk, the different commodities shall be separated by a substantial partition.

J. When a warehouse license covers more than one facility, each warehouse unit shall be designated by a number, beginning with the number 1, which number may not be changed without the prior approval of the commission.

K. Each storage unit, building, bin, or compartment shall have painted thereon or securely affixed, in a conspicuous manner and location, an identifying number or letter, or both, which may not be changed without prior approval of the commission.

L. Bulk grain bins shall be numbered at all openings on top and also on or near all outlet valves underneath so as to be easily identified.

M. Each facility shall contain adequate and accurate weighing and sampling equipment. All scales in warehouses licensed by the commission are subject to examination by the Division of Weights and Measures of the department.

N. Special Requirements for Rice. Provisions for identification cards shall be securely attached to all bins and when commodities are placed under receipt, an identification card showing the following information shall be firmly attached to the bin boards:

1. the lot number;
2. whether the receipt is negotiable or non-negotiable;
3. the number of the receipt;
4. the name of the person or company to whom the receipt was issued;
5. the number of containers of commodities, if not in bulk, in the bin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3409.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:296 (May 1983), amended LR 11:229 (March 1985), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:500 (February 2011).

§115. Bond Required for Warehouse License; Provisions Relative to Licensed Capacities

A. Each applicant shall execute and file a bond, on bond forms provided by the commission, which bond shall be issued by a company authorized to do business in Louisiana prior to issuance of the license.

B. Each bond shall be conditioned upon:

1. the faithful performance of all duties and obligations to patrons of the warehouse; and
2. compliance with all requirements of R.S. 3:3401-3425 and the regulations contained in this Part.

C. The amount of the bond shall be established on the basis of the capacity of the warehouse to be licensed.

1. The commission shall establish capacity records for all licensed facilities. Whenever there is a discrepancy between the capacity claimed by the applicant and the commission's capacity figures for the applicant, the bond to be required shall be determined by the commission's capacity figures. A licensee may, however, appeal the decision of the commission whenever it disagrees with the capacity figures established by the commission for its facility.

2. All facilities which commingle agricultural commodities shall bond 100 percent of their available capacity, subject to the exemptions contained in §115.C.5 and 6 of this Part.

3. Facilities which store identity-preserved commodities may, with the prior approval of the commission, bond 75 percent of their available capacity. In such event, the amount of the bond shall be increased if commodities in storage exceed the licensed capacity.

4. All capacity under one roof shall be bonded.

5. Outside tanks which are used solely for storage of company-owned commodities are not required to be bonded.

6. Buildings which are used solely for storage of company-owned commodities are not required to be bonded.

D. The amount of the bond shall be as follows:

1. \$0.20 per bushel for the first million bushels of licensed capacity—up to \$200,000 for a licensed capacity of 2 million bushels;

2. plus \$0.15 per bushel for the second million bushels of licensed capacity—a total of \$350,000 for a facility with a licensed capacity of 2 million bushels;

3. plus \$0.10 per bushel for all bushels over 2 million bushels up to 3.5 million bushels of licensed capacity—a maximum of an additional \$150,000.

E. A minimum bond of \$25,000 is required for all facilities of 125,000 bushels or less licensed capacity.

F. A maximum bond of \$500,000 is required for all facilities of 3.5 million or more bushels of licensed capacity.

G. Each bond shall be written for a period of one year, beginning on July 1, or for such other period of time as the commission may require.

H. Each bond shall provide for at least 90 days written notice to the commission prior to cancellation.

I. Each bond is subject to final approval by the commission and shall be so approved prior to issuance of the license.

J. Provisions for Alternate Security in Lieu of the Required Bond

1. The commission may accept alternate security in lieu of the required bond in an amount equal to 100 percent of the required bond.

2. Alternate security may be offered only by:

a. pledging of certificates of deposit;

b. filing of an irrevocable letter of credit, which shall be non-cancelable for a period of one year;

c. securing a first mortgage on immovable property which is located in Louisiana and which has an appraised value of at least one hundred fifty percent of the amount of the bond. The appraisal shall be made by an independent appraiser jointly designated by the commission and the applicant. The applicant shall provide a title insurance policy issued by a company authorized to do business in Louisiana in the amount of the required bond with the commission being an insured under the policy. The applicant shall pay all fees involved in providing such security.

3. Alternate security is subject to the approval of the commission. Approval is required prior to issuance of a license.

4. All alternate security instruments shall be assigned to the commission and maintained in the commission's office in Baton Rouge. Holders of certificates of deposit will continue to draw the interest thereon.

5. Whenever any warehouse ceases to operate as a licensed warehouse, alternate security filed in lieu of the required bond shall be retained by the commission:

a. until public notice, as herein required, is made; and

b. until completion of a final audit, which final audit shall be completed in not more than 120 days. Public notice of the commission's intent to release alternate security shall be made by publication in a newspaper of general circulation in the area where the licensee is located, as follows:

i. if there is a daily newspaper in the area, such notice shall be published at least three times, beginning at

least 15 days prior to the date on which the commission will release the alternate security;

ii. if there is no daily newspaper in the area, such notice shall be published in a weekly newspaper and shall be published once each week for the three weeks preceding the date on which the commission will release the alternate security.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and 3:3410.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:297 (May 1983), amended LR 10:75 (February 1984), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1301 (October 1993), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:500 (February 2011).

§117. Provisional Stock Insurance Required for Warehouse License

A. At all times, each warehouse shall carry sufficient provisional stock insurance to assure protection against fire and other disasters for all agricultural commodities in storage in an amount proportionate to the licensed capacity of the facility. Provisional stock insurance records are subject to examination by the commission during audit of the facility.

B. The provisional stock insurance shall be written for a period of at least one year by an insurance company authorized to do business in Louisiana and shall provide for 30 days written notice to the commission prior to cancellation.

C. A copy of the insurance policy or a certificate of insurance shall be filed with the commission prior to issuance of the license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3410.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:299 (May 1983), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:501 (February 2011).

§119. Amendment to License Required When Change of Status Occurs

A. The licensee shall give written notice to the commission within three days after any of the following occurs:

1. loss or damage to stored commodities or licensed facilities;

2. change of ownership of a licensed warehouse, including a change in the members of a partnership or in the officers of a corporation;

3. change in management personnel of a licensed warehouse;

4. change in the name of the business operating the facility;

5. any major structural change in the facility;

6. the termination of a lease covering a licensed facility;

7. change of business address;

8. filing of any legal action (except filing of suits for workmen's compensation) against the warehouse or the management personnel of the warehouse.

B. The licensee shall give prior written or oral notice to the commission before use of the facilities for the storage of any agricultural commodity not listed on the application and before any change in the licensed capacity of the facility (except a change resulting from fire or other actions outside the control of the warehouse).

C. Notice to the commission concerning a change in licensed capacity shall include:

1. name, address, and license number of the warehouse;
2. warehouse or warehouses affected by the change in capacity;
3. current licensed capacity of the affected facility(ies);
4. proposed new capacity (whether increased or decreased).

D. Whenever the licensed capacity of a facility changes, the bond required under §115 of this Part shall be changed within 45 days to conform to the new capacity. Failure to amend the bond as required herein will subject the licensee to revocation of its license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3410.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:299 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1301 (October 1993), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:501 (February 2011).

Subchapter D. Grain Dealers

§123. Requirements Applicable to All Grain Dealers

A. No person shall buy and/or sell agricultural commodities for producers, or represent producers in the purchase or sale of agricultural commodities, unless licensed as a grain dealer by the commission.

B. No grain dealer may store agricultural commodities belonging to any other person unless such grain dealer is also licensed by the commission as a warehouse or licensed under the U.S. Warehouse Act.

C. A single business entity which operates grain dealerships at more than one location may be covered by one license. In such instances, the applicant shall provide separate personnel information for each location but may submit a consolidated financial statement covering all locations.

D. When two or more businesses which are separate legal entities, even though owned and/or operated by the same individual or the same legal entity, are operated at one or more physical locations, each separate entity shall obtain a separate license.

E. Each grain dealer license issued by the commission shall expire on June 30 following the date of issue.

F. The applicant shall be of legal age and shall be able to demonstrate knowledge of the practical facts of keeping accurate records regarding the trading of agricultural commodities.

G. The applicant shall execute and file a bond, on forms provided by the commission, which is written by a bonding company authorized to do business in Louisiana. The bond shall be in an amount of \$50,000 and shall provide for 90

days written notice to the commission prior to cancellation. The bond shall be conditioned upon:

1. the faithful performance of all duties and obligations to producers; and
2. compliance with all requirements of R.S. 3:3401-3425 and the regulations contained in this Part. The bond is subject to the approval of the commission and shall be so approved prior to issuance of the license. Failure to keep the bond in full force and effect shall subject the grain dealer to suspension or revocation of its license.

H. The commission may accept alternate security in an amount of \$50,000 in lieu of the required bond.

1. Alternate security may be offered only by:
 - a. pledging of certificates of deposit or other similar negotiable instruments; or
 - b. filing of an irrevocable letter of credit, which shall be non-cancelable for a period of one year; or
 - c. securing a first mortgage on immovable property which is located in Louisiana and which has an appraised value of at least 150 percent of the amount of the bond. The appraisal shall be made by an independent appraiser jointly designated by the commission and the applicant. The applicant shall provide a title insurance policy issued by a company authorized to do business in Louisiana in the amount of the required bond with the commission being an insured under the policy. The applicant shall pay all fees involved in providing such security.

2. All alternate security instruments shall be assigned to the commission and will be maintained in the commission's office in Baton Rouge. Holders of certificates of deposit will continue to draw interest thereon.

3. Whenever any grain dealer ceases to operate as a licensed grain dealer, alternate security filed in lieu of the required bond shall be retained by the commission:

- a. until public notice, as herein required, is made; and
- b. until completion of a final audit, which final audit shall be completed in not more than 120 days. Public notice of the commission's intent to release alternate security shall be made by publication in a newspaper of general circulation in the area where the licensee is located as follows:
 - i. if there is a daily newspaper in the area, such notice shall be published at least three times, beginning at least 15 days prior to the date on which the commission will release the alternate security;
 - ii. if there is no daily newspaper in the area, such notice shall be published in a weekly newspaper and shall be published once each week for the three weeks preceding the date on which the commission will release the alternate security.

4. Alternate security offered in lieu of the required bond is subject to the approval of the commission and shall be approved prior to issuance of the license.

I. The applicant shall demonstrate a net worth which is reasonably sufficient to assure its ability to meet its obligations to producers. The commission shall be the final judge of the sufficiency of each applicant's net worth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3411.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Agricultural Commodities Commission, LR 9:301

(May 1983), amended LR 10:75 (February 1984), LR 12:287 (May 1986), LR 35:2311 (November 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:502 (February 2011).

§125. Risk Position Requirements

A. Each grain dealer shall achieve and maintain a relatively even hedge position within no more than three business days after deposit of agricultural commodities by producer. Relatively even hedge position means that the grain dealer has entered into contracts to buy or sell commodities which are roughly equal in value to the amount of the dealer's outstanding obligations to producers.

B. Whenever a grain dealer's risk position is brought to market, its loss potential shall never exceed 30 percent of the grain dealer's current net worth. No grain dealer may maintain a risk position in excess of 30 percent of its current net worth, provided that the commission may specify a lower maximum risk position for any grain dealer in an amount having a reasonable relationship to that grain dealer's current net worth.

C. The commission may require a lower maximum risk position on any grain dealer by the following procedures.

1. The commission shall notify the grain dealer that a public hearing will be held, within five days after notice, to establish for such grain dealer a requirement that its risk position will be less than 30 percent of its current net worth.

2. The grain dealer may appear on its own behalf or may be represented by counsel at the hearing, and may show cause why such lower maximum risk position shall not be established for such grain dealer.

3. The commission may require the submission of interim financial statements in order to make a final determination with respect to establishment of a lower risk position requirement for such grain dealer.

4. The commission shall make a determination at the public hearing and shall establish an exact risk position as a percentage of current net worth for such grain dealer. Written notice of the lower risk position requirement shall be given by the director immediately following such public hearing.

D. Any grain dealer who does not adhere to the risk position requirement imposed for such grain dealer by the commission shall be subject to the penalties set forth in §149 of this Part.

E. Any grain dealer whose risk position is established by the commission at less than 30 percent of its net worth may request reconsideration of the established risk position whenever its financial position changes. Such request shall be made in writing, setting forth the reasons therefore, and the commission shall consider the request at the next regularly scheduled quarterly meeting following receipt of such request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3413.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:302 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1301 (October 1993), amended by the Department of Agriculture and

Forestry, Agricultural Commodities Commission, LR 37:503 (February 2011).

Subchapter E. Assessments and Fees

§127. Assessments: Amount, Time of Payment, Payment under Special Conditions

A. Assessments shall be due and payable from the producer at the first point of sale as defined in §101 of this Part.

B. Each grain dealer shall deduct the assessments set forth in this rule and in R.S. 3:3422 from the proceeds to be paid to producers at the time of sale of commodities.

C. Assessments on commodities normally weighed by hundredweight and on commodities normally weighed by bushels shall be as set forth in R.S. 3:3422. The weight of commodities normally weighed in barrels shall be converted to bushels by multiplying the barrel weight by 3.6.

D. Rates of Assessments

1. Assessments on regulated commodities listed in §105 of this Part shall be at rates comparable to the rates set forth in §127.E of this Part. The exact assessment on each commodity shall be promulgated in the *Louisiana Register* and when so promulgated shall remain in full force and effect until changed by subsequent promulgation in the *Louisiana Register*. Such assessments may be collected as soon as promulgated in the *Louisiana Register* and shall be collected in the same manner as the assessments listed in §127.C of this Part.

2. Rates of assessments to be levied at the first point of sale of agricultural commodities.

Rough Rice	\$0.01 per hundredweight
Corn	\$0.007 per bushel
Soybeans	\$0.007 per bushel
Oats	\$0.007 per bushel
Sorghum	\$0.007 per bushel
Wheat	\$0.007 per bushel
Cotton	\$0.10 per bale

3. All assessments collected by licensees of the commission shall be remitted to the commissioner, together with the report form required by the commission, no later than the fifteenth day of the month following the month in which the assessments are collected.

4. The above assessments shall remain in effect until changed by the commission.

E. Each cotton merchant, grain dealer and warehouse shall remit all assessments withheld from producers, or otherwise due under this rule, together with a report on the form provided by the commission, to the commissioner no later than the fifteenth day of each month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3422.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:303 (May 1983), amended LR 9:459 (July 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1301 (October 1993), repromulgated LR 20:154 (February 1994), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:503 (February 2011).

§128. Fees: Amount, Time of Payment

A. Fees are due and payable upon the receipt of an invoice from the department. A late payment shall be assessed for all invoices paid after 30 days from the date of the invoice. The amount which shall be assessed shall be 10 percent of the outstanding balance.

B. Applicable fees shall be charged for each request for the department to provide official inspection service or weighing service.

C. Schedule of Fees

1. The regular hours shall be 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays and declared half-holidays. All hours worked, that are not regular hours, shall be considered as overtime. Legal holidays and half-holidays shall be those legal holidays designated by the legislature in R.S. 1:55(B) and any other time declared to be a holiday or half-holiday by the governor of Louisiana in accordance with R.S. 1:55.

2. The hourly rate shall be \$26 per hour, including travel time. Overtime hours shall be billed at one and one-half times the hourly rate and shall be assessed in half-hour increments.

3. Mileage shall be billed at the IRS standard mileage rate and applicable hourly rate for actual miles traveled from nearest inspection point. Changes to the mileage rate shall be effective when the IRS changes their standard mileage rate.

4. Official Services (including sampling except as indicated)

Online D/T sampling inspection service (sampling, grading and certification), per regular hour	\$26
Overtime hourly rate, per hour	\$39
Unit Inspection Fees:	
Aflatoxin Testing, per sample	\$30
Rail Car, per car	\$20.50
Truck/Trailer, per carrier	\$10
Barge, per 1,000 bushels	\$2.60
Submitted sample inspection	\$12.30
Re-inspection grain sample	\$15
Rail Car (per sample)	\$10.30
Truck/Trailer (per sample)	\$5.30
Barge (per sample)	\$25.30
Starlink TM (if applicant supplies kit), per test	\$6
Starlink TM (if LDAF provides kit), per test	\$12
Factor only determination, per factor (not to exceed full grade fee)	\$5.20
Probe Sampling Barge (per barge)	\$100
On-Line Sampling Barge (per hour)	\$20

D. Moisture Meter Registration and Inspection Fee

1. A registration fee of \$20 per meter and an inspection fee of \$40 per meter to shall be paid by the owner or user of every moisture measuring device used or held for use at any commercial facility which receives, holds, dries, stores, mills, processes or otherwise deals in agricultural commodities in the state, when such use or intended use is for the purpose of determining discounts or other price variances in connection with the purchase or sale of such commodity, said Each moisture meter device shall be registered with the Louisiana Department of Agriculture and Forestry.

2. Registration shall be required on or before May 15 of each year or within five business days of acquisition of new or additional unregistered moisture measuring devices

for the purpose set forth in Paragraph 1 of this Section. Registration forms shall be provided by the department and shall state the name and address of the commercial facility which owns or uses the device, the number of devices used and held for use, the brand name(s) of the device(s), and such other information as may be deemed necessary to carry out the provisions of this Subchapter.

3. A moisture measuring device shall be deemed defective when an inspector determines after an inspection and testing that:

a. the moisture measuring device varies in tolerance in excess of one-half of one per cent with the testing device used by the inspector; or

b. the commercial facility does not have available the latest charts and calibration data for the type of commodity being tested; or

c. the facility does not have available accurate and proper scales and thermometers for use in conjunction with the type of moisture measuring device being used.

4.a. A moisture measuring device which is determined to be defective and which the defect cannot be immediately corrected shall be tagged in such a manner as to warn the public that the device is not in compliance with the law.

b. Notice shall be conspicuously posted indicating that a moisture measuring device has been deemed defective and the percentage by which the device has been determined to be out of tolerance.

5. Moisture measuring devices which have been registered and inspected and which have not been found defective shall bear an official tag or sticker from the department, placed on the devices by the inspector in such a manner as to be readily visible, bearing the year of inspection. Such tags or stickers shall be nontransferable.

6. All non-National Type Evaluation Program (NTEP) approved moisture measuring devices registered prior to May 15, 2010 shall be deemed suitable for use. In the event a non-NTEP moisture measuring device is deemed defective after May 15, 2010, it shall be taken out of service and replaced with an NTEP approved device.

7. Notwithstanding §128.D of this Part, all moisture measuring devices shall be NTEP approved devices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3414.3 and R.S. 3:3422.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:287 (May 1986), amended LR 14:528 (August 1988), LR 19:889 (July 1993), LR 23:196 (February 1997), LR 27:815 (June 2001), amended by the Department of Agriculture and Forestry, Office of the Commissioner, Agricultural Commodities Commission, LR 30:197 (February 2004), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:504 (February 2011).

Subchapter F. Scale Tickets

§129. Scale Tickets: Filing, Contents, Maintenance in Records

A. Immediately upon deposit with a licensed warehouse or a licensed grain dealer of any agricultural commodity or farm product regulated under R.S. 3:3401-3425, the warehouse or grain dealer shall issue a scale ticket to the depositor which conforms to the requirements of this rule. Warehouses licensed under the U.S. Warehouse Act may use scale tickets approved by the federal licensing agency.

B. Each scale ticket shall contain the following information:

1. name and location of the licensed warehouse or grain dealer;
2. name and other information sufficient to identify the owner of the agricultural commodities or farm products;
3. the type, quantity, and grade (or applicable grade factors) necessary to determine the net value of the commodity received;
4. date the commodity was deposited in the warehouse or grain dealer's custody;
5. one of the following, as appropriate:
 - a. if the commodity is deposited on a spot basis, the words spot or spot sale, and when so marked the scale ticket shall serve as written confirmation of the sale;
 - b. if the commodity is deposited for any type of storage, including open storage, the word storage;
 - c. if the commodity is deposited for contract, the word contract;
6. such other terms as may be agreed upon between the depositor and the warehouse operator or grain dealer.

C. Scale tickets shall be sequentially pre-numbered and shall be issued to depositors in numerical order. Different scale ticket books may be used for different scales.

D. Each scale ticket shall consist of an original and at least one copy. The original or a copy of the scale ticket shall be maintained in numerical order in the licensee's records and shall be available for examination by the commission at all times.

E. Whenever a scale ticket is voided, all copies shall be so marked, dated, and signed by an authorized agent of the warehouse or grain dealer, and all copies of the voided scale ticket shall be maintained in the warehouse or grain dealer's records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3415, R.S. 3:3419.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Agricultural Commodities Commission, LR 9:304 (May 1983), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:504 (February 2011).

Subchapter G. Warehouse Receipts

§131. Warehouse Receipts: Completion; Issuance; Open Storage; Cessation of Business; Other Applicable Laws; Cancellation of Receipts; Company-Owned Commodities; Form of Non-negotiable Receipts

A. A licensee may issue warehouse receipts by use of a paper warehouse receipt system, an electronic warehouse receipt system, or both.

B. Except as herein provided, all warehouses shall use paper or electronic sequentially numbered warehouse receipts.

C. Warehouses licensed under the U.S. Warehouse Act may use receipt forms approved by the federal licensing agency.

D. Issuance of Receipts

1. Each warehouse shall, on demand, issue a warehouse receipt for stored agricultural commodities or farm products.

2. No warehouse shall issue a warehouse receipt covering commodities which are already covered by an

outstanding and uncanceled warehouse receipt, except as provided by §133.D of this Part.

3. No warehouse may issue a warehouse receipt covering commodities which are not actually stored in the warehouse.

E. All spaces on the warehouse receipt shall be filled in with appropriate information or crossed out (xxxxx).

F. Warehouse receipts may be signed only by authorized agents of the warehouse.

G. Open Storage

1. A warehouse which has commodities under open storage shall, in all cases when such commodities are not physically stored in its facilities (i.e., forwarded), be able to produce or secure a warehouse receipt from the warehouse to which such commodities were forwarded. The physical whereabouts of all agricultural commodities in open storage are subject to verification by the commission.

H. Delivery of Commodities Covered by Warehouse Receipt or Scale Ticket Marked for Storage

1. The holder of a warehouse receipt or a scale ticket marked for storage may request delivery of the agricultural commodities, or any portion thereof, at any time.

2. When the depositor of agricultural commodities removes such commodities from storage, the warehouse shall deliver to the depositor commodities of the same quantity and grade as designated on the warehouse receipt or scale ticket marked for storage.

3. The warehouse shall, without unnecessary delay, deliver any agricultural commodities or farm products stored therein upon demand by the holder of a warehouse receipt or scale ticket marked for storage upon the following conditions:

- a. full payment of all amounts owed to the warehouse;
- b. surrender of the warehouse receipt, if negotiable, for cancellation.

I. Cancellation of Warehouse Receipt

1. When commodities or farm products are removed from storage, the warehouse shall promptly and plainly cancel the warehouse receipt covering such commodities or farm products.

2. No warehouse receipt shall be canceled unless:

- a. the commodities have been removed from storage, by sale or otherwise; or
- b. a new warehouse receipt has been issued to replace a lost or destroyed warehouse receipt, as provided under §133.D of this Part.

J. Warehouse Receipt on Company-Owned Commodities

1. A warehouse may issue and hold a warehouse receipt for commodities which are company-owned, in whole or in part, and stored in the warehouse, provided that such warehouse receipts are subject to all requirements of the regulations contained in this Part.

K. Non-Negotiable Warehouse Receipts

1. Each person to whom a non-negotiable warehouse receipt is issued shall furnish the warehouse with a written statement naming persons having power to authorize delivery of the commodity covered by the non-negotiable warehouse receipt, together with a bona fide signature of such person. The warehouse shall not release the commodity

except to persons so authorized by the owner of the commodities or farm products.

2. The warehouse may release a portion of the commodities or farm products covered by a non-negotiable warehouse receipt, upon presentation of authorization as above required, but may not release all of the commodities covered by a non-negotiable warehouse receipt until such time as the non-negotiable warehouse receipt is returned and canceled.

L. Cessation of Business

1. Whenever any warehouse ceases to operate as a licensed warehouse, for any reason, the warehouse shall satisfy all outstanding obligations to producers and all outstanding warehouse receipts shall be canceled. The requirement for cancellation does not, however, apply when the warehouse is unable, for any reason, to satisfy obligations to producers.

M. Other Applicable Laws

1. In any circumstances surrounding the issuance of warehouse receipts which are not covered by R.S. 3:3401-3425 or the regulations contained in this Part, Chapter 7 of Title 10 of the Louisiana Revised Statutes of 1950 shall control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3416, R.S. 3:3417 and R.S. 3:3418.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:306 (May 1983), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:505 (February 2011).

§133. Paper Warehouse Receipts: Required Form; Issuance; Partial Delivery; Duplicate Receipts; Non-Negotiable Receipts

A. Except as herein provided, all paper warehouse receipts shall only be sequentially pre-numbered warehouse receipts on forms furnished by the commission.

B. Agents of the commission shall note the issuance of all partial releases, by number of each such partial release, on the original receipt.

C. Whenever a warehouse receipt is voided, all copies shall be so marked, dated, and signed by an authorized agent of the warehouse; the green and yellow copies of the voided receipt shall be maintained in proper sequence in the warehouse's receipt records and the pink copy shall be mailed to the commission on the day voided.

D. Issuance of Duplicate Negotiable Warehouse Receipt

1. If a negotiable warehouse receipt is lost or destroyed, the warehouse shall notify the commission of such loss or destruction prior to issuance of a duplicate warehouse receipt. A duplicate warehouse receipt replacing a lost or destroyed negotiable warehouse receipt may be issued by the warehouse only upon the written authorization of the commission.

2. Before authorizing issuance of a duplicate negotiable warehouse receipt, the commission shall require that the person applying for authority to issue the duplicate warehouse receipt shall file with the commission a notarized statement that:

- a. the applicant is lawfully entitled to possession of the duplicate warehouse receipt;
- b. the applicant has not negotiated or assigned the lost or destroyed warehouse receipt; and
- c. reports how the original was lost or destroyed.

3. A duplicate negotiable warehouse receipt issued to replace a lost or destroyed receipt shall:

- a. be marked duplicate;
- b. be distributed as required under §131.C of this Part;
- c. contain the same terms and conditions as the lost or destroyed warehouse receipt; and
- d. bear on its face the number and date of the warehouse receipt which it replaces.

2. The warehouse shall retain both the green and the yellow copies of canceled warehouse receipts in numerical order in the warehouse records for a period of at least three years after date of cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3416, R.S. 3:3417 and R.S. 3:3418.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:306 (May 1983), amended LR 11:229 (March 1985), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1302 (October 1993), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:506 (February 2011).

§134. Electronic Warehouse Receipts (EWR): Validity; Format; Issuance; Rights and Obligations; Printing; Records Retained; Duplicates

A. The issuance and transfer of warehouse receipts in electronic form are specifically authorized by this Part. Any such warehouse receipts shall have the same validity and enforceability, for all purposes, as those in paper form.

B. An EWR shall be in the format prescribed in the applicable provider agreement.

C. An EWR issued in accordance with the R.S. 3:3401-3425 shall not be denied legal effect, validity, or enforceability on the grounds that the information is generated, sent, received or stored by electronic or similar means.

D. A warehouse shall not be required to issue a warehouse receipt in electronic form.

E. If a warehouse licensed under R.S. 3:3401-3425 elects to issue EWRs, and if the depositor or other holder prefers a paper receipt, the warehouse shall cancel the EWR and issue a paper receipt.

F. A warehouse operator intending to issue or issuing EWRs under the R.S. 3:3401-3425 shall:

1. issue an EWR through only one authorized provider annually;
2. inform the department of the identity of its provider 60 calendar days in advance of first issuing an EWR through that provider. The department may waive or modify this 60-day requirement;
3. before issuing an EWR, request and receive from the department a range of consecutive warehouse receipt numbers that the warehouse will use consecutively for issuing their EWRs;
4. cancel an EWR only when it is the holder of the EWR;
5. receive written authorization from the department at least 30 calendar days before changing providers. Upon authorization, a warehouse may request its current provider to transfer, and that provider shall transfer, its EWR data from the current provider's CFS to the CFS of the authorized provider it selects;

6. notify all holders of EWRs in the CFS at least 30 calendar days before changing providers, unless otherwise allowed or required by FSA; and

7. for purposes of §134.F.4 of this Part, the warehouse is considered a "holder" solely for the purpose of canceling an electronic warehouse receipt on the electronic warehouse receipt system and the warehouse shall in no way be considered the owner of the grain that was covered by the canceled electronic warehouse receipt, absent evidence of sale of that grain to the warehouse.

G. EWR Rights and Obligations. An EWR establishes the same rights and obligations with respect to an agricultural product as a paper warehouse receipt and possesses the following attributes.

1. The holder of an EWR will be entitled to the same rights and privileges as the holders of a paper warehouse receipt.

2. Only the current holder of the EWR may transfer the EWR to a new holder.

3. The identity of the holder shall be kept confidential by the provider.

4. Only one person may be designated as the holder of an EWR at any one time.

5. A warehouse operator may not issue an EWR on a specific identity-preserved or commingled lot of grain or any portion thereof while another valid warehouse receipt representing the same specific identity-preserved or commingled lot of grain remains not canceled. No two warehouse receipts issued by a warehouse may have the same warehouse receipt number or represent the same lot of grain.

6. Holders and warehouse operators may authorize any other user of their provider to act on their behalf with respect to their activities with this provider. This authorization shall be in writing and acknowledged and retained by the warehouse and provider.

H. Printing

1. Electronic warehouse receipts may be printed by a person authorized by the department. The department shall authorize persons to print warehouse receipts if they are printed in accordance with R.S. 3:3401-3425 and the regulations contained in this Part.

2. All electronic warehouse receipts shall be:

a. printed only for licensee;

b. numbered consecutively either at the time of printing or through the control of a computer generated system, and the numbers shall not be duplicated.

I. A complete record of receipts printed shall be retained by the person printing them for five years, showing for whom printed, the number printed, and the consecutive numbers that were printed on the receipts.

J. A duplicate copy of any invoice rendered for printing warehouse receipts shall be forwarded by the person printing them to the department at the same time as billing is made to the warehouse. The invoice shall show for whom printed, the consecutive numbers that were printed on the receipts, type of receipt (whether negotiable or non-negotiable), and number of receipts printed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3416, R.S. 3:3417 and R.S. 3:3418.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services,

Agricultural Commodities Commission, LR 37:506 (February 2011).

Subchapter H. Grading; Sampling; Out-of-Condition Commodities

§135. Elevators: Official Grades and Sampling

A. All agricultural commodities shall be graded and sampled in accordance with official USDA grading standards, as detailed in The Official United States Standards for Grain handbook.

B. Procedures that result in equivalent results to USDA procedures are acceptable.

C. Requirements for Certification as an Elevator Grain Sampler and/or Grader

1. All persons interested in being certified to grade or sample grain for an elevator shall submit an application on a form which shall be provided by the commission.

2. All applicants shall pass an examination which shall be given by the department. The examination fee shall be \$5 and shall be submitted with the application. If the applicant successfully completes the examination, he will be required to pay a \$25 fee in order to be certified.

3. Each person that has been certified and whose certification has not been revoked or suspended may renew that certification by submitting an application to renew with a fee of \$25.

4. All certifications shall expire on December 31 of each year and shall be renewed annually.

D. One elevator representative may be certified as grader and sampler as long as the representative is responsible for subordinate graders and samplers.

E. The commission shall be required to provide each grain dealer with a copy of all changes to USDA standards prior to the effective date of such changes.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:3405 and R.S. 3:3414.3.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:309 (May 1983), amended LR 12:288 (May 1986), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:507 (February 2011).

§136. State Official Grain Inspections

A. Standards established in *Regulations Under the United States Grain Standard Act, As Amended*, USDA, Federal Grain Inspection Service (CFR, Title 7, Chapter VIII, Pt. 800 (Section 800.0 to 800.219), 801 (Section 801.1-801.12), 802 (Section 802.0 to 802.13), and 810 (Section 810.201 to 810.555), shall apply to all Department of Agriculture and Forestry grain inspections.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:3405 and R.S. 3:3414.3.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:288 (May 1986), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:507 (February 2011).

§137. Out-of-Condition Commodities

A. If a warehouse operator has reason to believe that any identity-preserved commodities are out-of-condition, or are becoming out-of-condition, he shall give immediate notice of such fact to the director of the commission and to the owner of the commodities.

B. The director shall immediately send a representative to the warehouse to determine whether out-of-condition commodities shall be cleaned, at the cost of the warehouse, or disposed of as the law permits and the circumstances require.

C. The storer of such commodities shall notify the warehouse operator, within 24 hours after receipt of notice, of the disposition to be made of such commodities. If the storer of the commodities fails to make such notice to the warehouse operator, the warehouse operator may dispose of the commodities as authorized by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:309 (May 1983), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:507 (February 2011).

Subchapter I. Records and Reports

§141. Records Required to be Maintained

A. Each grain dealer, cotton merchant and warehouse shall maintain the following records, when applicable to the commodity stored or traded, on a current basis in the company's principal office in this state at all times:

1. current financial statement;
2. bank statements;
3. bank reconciliations;
4. broker's statements;
5. current listing of unpriced commodities;
6. sequential record of all scale tickets;
7. sequential record of all warehouse receipts;
8. settlement or distribution sheets;
9. weight sheets;
10. perpetual inventory record;
11. insurance file, including copies of monthly reports to the carrier;
12. record of all assessments collected and remitted;
13. copies of all outstanding contracts;
14. copies of all outstanding notes and mortgages affecting the business;
15. a sample of each lot of grain which contains damage in excess of 7 1/2 percent shall be:
 - a. maintained for five days from the original grade date; and
 - b. maintained in separate containers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3419 and R.S. 3:3414.3.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:309 (May 1983), amended LR 12:288 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998), LR 35:2311 (November 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:508 (February 2011).

§143. Reports Required

A. Each cotton merchant, grain dealer and warehouse shall file a report of assessments collected from producers, on the form provided by the commission, and remit such assessments to the commissioner no later than the fifteenth day of each month. The assessment report shall be filed each month whether or not any assessments were collected during the month.

B. No later than the fifteenth day of each month, each warehouse shall file a copy of his daily inventory report for the preceding month with the commission.

1. The reports shall be filed on forms provided by the commission.

2. The commission may accept computer print-outs containing the same information as required by the commission's form.

3. The commission may accept any report in substantially the same form which is prepared as a result of any federal requirement in lieu of the report on the commission's form.

C. Subsequent to initial licensure under R.S. 3:3401-3425, each cotton merchant, grain dealer and warehouse shall file a financial statement, containing all of the information required under §107.B of this Part, no later than 90 days after the last day of the warehouse's or grain dealer's fiscal year.

D. Each cotton merchant, grain dealer and warehouse shall file such unaudited financial statements as and when required by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3419 and R.S. 3:3422.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:310 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1302 (October 1993), LR 35:2311 (November 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:508 (February 2011).

Subchapter J. Access Requirements

§145. Access Requirements

A. Each licensee shall permit any officer or authorized representative of the commission or the commissioner to enter all locations listed on the application for license and inspect, examine, and/or audit all contents, facilities, equipment, records, books, accounts, samples, and grading and sampling practices relating thereto at any time during normal working hours, with or without notice.

B. The warehouse operator, cotton merchant, or grain dealer shall provide the necessary assistance required for any inspection, examination, and/or audit made in accordance with R.S. 3:3401-3425.

C. Each licensee having physical custody of commodities shall permit any authorized representative of the commission or the commissioner to sample commodities at any time during normal business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3414.3 and R.S. 3:3419.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:310 (May 1983), amended LR 12:288 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:508 (February 2011).

§Subchapter K. Posting Requirements

§147. Posting Requirements

A. Each grain dealer and cotton merchant shall post its original license issued by the commission in a conspicuous location at its principal place of business. A copy of the

license shall be posted at all other locations covered by the license.

B. Each warehouse location shall post its original license issued by the commission so that it is clearly visible at the main entrance to the warehouse. When only a portion of a location is licensed by the commission, that portion licensed by the commission shall be clearly marked.

C. The warehouse schedule of tariffs or charges shall be posted in a conspicuous location at each location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3409, R.S. 3:3411 and R.S. 3:3420.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:311 (May 1983), amended LR 11:229 (March 1985), LR 12:287 (May 1986), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:508 (February 2011).

Subchapter L. Suspension/Revocation of License; Other Penalties

§149. Adjudication Required Prior to Suspension/Revocation of License or Imposition of Other Penalties; Amount of Penalties; Surrender of License

A. Whenever the chairman has any reason to believe that a violation of R.S. 3:3401-3425 or the regulations contained in this Part has occurred, he shall call a meeting of the commission for the purpose of conducting an adjudicatory hearing to make a determination with respect to the suspected violation.

B. Upon any directive of the chairman, the director shall give written notice to the person suspected of the violation, such notice to comply with the requirements of the Administrative Procedure Act, at least five days prior to the date set for such adjudicatory hearing.

C. At any such adjudicatory hearing, the person suspected of a violation of R.S. 3:3401-3425 or the regulations contained in this Part shall be accorded all of the rights set forth in the Administrative Procedure Act.

D. The commission may suspend or revoke a license for any of the grounds set forth in §109 of this Part, or any other violation of R.S. 3:3401-3425 or the regulations contained in this Part, whenever proof thereof is made at any adjudicatory proceeding noticed and conducted as required by the Administrative Procedure Act.

E. Whenever the commission makes a determination at an adjudicatory hearing that any violation of R.S. 3:3401-3425 or the regulations contained in this Part has occurred, the commission may:

1. suspend or revoke the license;
2. impose a monetary fine;
3. place licensee on probation.

F. Any suspension of a license shall be for a definite period of time and the licensee shall be informed in writing of the period of suspension.

G. The commission may impose a penalty of up to \$1,000 for each violation of R.S. 3:3401-3425 or the regulations contained in this Part which is proven in an adjudicatory hearing.

H. Each separate day on which a violation occurs shall be considered a separate violation.

I. Whenever the commission suspends or revokes a warehouse, cotton merchant, or grain dealer license, the

former licensee shall immediately surrender the original and all copies of the license.

J. No person whose license has been suspended or revoked may engage in any of the activities regulated under R.S. 3:3401-3425.

K. Any licensee may appeal any action taken by the commission to suspend/revoke a license or impose a monetary penalty by either:

1. applying for a rehearing under the procedures provided in the Administrative Procedure Act; or
2. applying for judicial review of the commission's determination, under either the Administrative Procedure Act or other applicable laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3410, R.S. 3:3411, R.S. 3:3417 and R.S. 3:3424.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:311 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:288 (May 1986), LR 19:1303 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:509 (February 2011).

Subchapter M. Schedule of Inspections; Voluntary Inspection

§151. Inspection of Physical Facilities and Contents; Schedule

A. A complete inspection of the physical facilities and the contents thereof shall be made of each licensee at least once during each license period, but may be made more frequently. Such inspection of facilities and contents may or may not be made in conjunction with an audit of the licensee's books and records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3406.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:312 (May 1983), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:509 (February 2011).

§153. Voluntary Inspection Service

A. Warehouses which require more frequent inspection and verification of contents, for whatever reason, may secure such services by making an application to the commission.

B. Voluntary inspection of facilities and contents, and verification thereof, on a schedule which shall be mutually agreed upon between the warehouse applying for voluntary inspection services and the commissioner, shall be made for a fee of \$0.01 per hundredweight for commodities normally weighed by hundredweight, \$.007 per bushel (or barrel weight converted to bushels as provided by R.S. 3:3422 and §127.C of this Part) for commodities normally weighed by bushel, or such other fee as may be promulgated by the commission as an assessment fee on other agricultural commodities or farm products.

C. The fee for voluntary inspection services shall be due and payable within 15 days after each inspection is completed.

D. The total fee for each voluntary inspection of facilities and contents shall be determined by multiplying the total amount of commodities under warehouse receipt at the time

of voluntary inspection services times the fee set forth in §153.B of this Part.

E. The minimum inspection fee applicable to voluntary inspection services, when performed for any licensee of the commission, shall be \$100.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3422.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:312 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1303 (October 1993), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:509 (February 2011).

Subchapter N. Exemptions

§155. Exemptions

A. The regulations contained in this Part shall not apply to the following:

1. cold storage facilities;
2. facilities which store only commodities which are imported from outside the boundaries of the continental United States;
3. seed dealers licensed under R.S. 3:1431 et seq., who store seed for producers, which is identifiable on the bag and in the seed dealer's records as to the owner thereof, but who do not engage in any other activities regulated under R.S. 3:3401-3425. This exemption does not apply to seed dealers who issue warehouse receipts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3425 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:313 (May 1983), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:510 (February 2011).

Subchapter O. Grain and Cotton Indemnity Fund

§191. Creation

A. The Grain and Cotton Indemnity Fund is hereby created pursuant to R.S. 3:3410.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:629 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:510 (February 2011).

§193. Definitions

A. The following words and terms are defined for purposes of this Subchapter and supplement the words and terms defined in §101 of this Part.

Claimant—a producer, as defined in §101 of this Part.

Fund—the Grain and Cotton Indemnity Fund.

Insolvency—the inability of a licensee to meet debts or discharge liabilities.

Licensee—for purposes of this Subchapter only, a *Licensee* is a cotton merchant as defined in R.S. 3:3402(6) or a grain dealer as defined in R.S. 3:3402(10).

Value of Commodity—the quoted price plus or minus premiums or discounts such as moisture and quality factors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services,

Agricultural Commodities Commission, LR 35:629 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:510 (February 2011).

§195. Purpose

A. Upon the insolvency of a licensee, the fund shall be used to reimburse a producer who has not otherwise been fully compensated for grain or cotton sold to the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:629 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:510 (February 2011).

§197. Assessments

A. The commission shall charge an assessment at the rate of 1/25 of one percent on the value of all agricultural commodities regulated under this Chapter which are purchased by grain dealers and cotton merchants licensed in this state.

B. The assessments shall be levied only on commodities which are grown in Louisiana and that are regulated by the commission.

C. The assessments shall be due and payable to the commission by the licensee at the first point of sale, except as otherwise provided for under §199 of this Part.

D. The assessments shall be due to the commission on a monthly basis.

E. Each grain dealer and cotton merchant shall send a completed copy of the Louisiana Grain and Cotton Indemnity Fund Monthly Assessment Report (supplied by the commission) and assessment to the commission by the fifteenth of each month for the preceding month.

F. In the event no assessments are collected by the licensee, the licensee shall still submit a report each month to the commission on the approved form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:629 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:510 (February 2011).

§199. Cotton Merchants Operating on a Cooperative Basis

A. Cotton merchants operating on a cooperative basis shall pay the assessment rate of 1/25 of one percent of the value of the commodity at the time of each payment, including any initial advance payment, progress payments and final payment to its members as proceeds of the crop.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:629 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:510 (February 2011).

§201. Claim Provisions

A. The monies in the Grain and Cotton Indemnity Fund shall be used solely for the administration and operation of the fund.

B. Any claimant who wishes to assert a claim shall provide, under oath, written and notarized proof of a loss covered by this fund within 60 days of the loss.

C. A written claim shall include all of the following information:

1. name and address of claimant;
2. name of the licensee against whom claimant is asserting a loss;
3. nature of the relationship and transaction between claimant and licensee;
4. the date of the loss which shall be defined as the date on which the claimant knew or should have known that a loss had occurred;
5. the amount of the loss and how calculated;
6. a concise explanation of the circumstances that precipitated the loss;
7. copies of those documents relied upon by claimant as proof of said loss.

D. Failure to furnish such proof of loss within the required time shall not invalidate nor reduce the claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible.

E. Upon receipt of a proof of loss, the commission shall review the claim to determine whether it is covered under the program. The burden of proof to establish the loss shall be upon the claimant.

F. Once proof of loss has been filed against a licensee, the commission may make a complete inspection of the licensee's physical facilities and the contents thereof, as well as an examination of all books and records of the licensee and/or claimant, subject to the confidentiality requirements of R.S. 3:3421.

G. Once proof of loss has been filed against a licensee, any other claimants alleging a loss caused by said licensee shall have a period of 60 days within which to post and thereby file a written claim.

H. The said 60 day period shall begin to run upon publication by the commission of the notice of claim in the official local journal for legal notices, or the print publication with the highest circulation in the area serviced by the licensee.

I. If claims for indemnity payments from the fund exceed the amount in the fund, the commission shall prorate the claims and pay the prorated amounts. As future assessments are collected, the commission shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this Subchapter.

J. Distributions from the fund shall be made on a periodic basis as deemed necessary by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:630 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:510 (February 2011).

§203. Distribution of Funds for Claims from Prior Insolvency

A. Any claimant who wishes to assert a claim against a licensee who became or becomes insolvent after January 1,

2008, but before the promulgation of these rules shall provide, under oath, written and notarized proof of a loss covered by this fund within 30 days of notification of claim process.

B. A written claim shall include all of the following information:

1. name and address of claimant;
2. name of the licensee against whom claimant is asserting a loss;
3. nature of the relationship and transaction between claimant and licensee;
4. the date of the loss which shall be defined as the date on which the claimant knew or should have known that a loss had occurred;
5. the amount of the loss and how calculated;
6. a concise explanation of the circumstances that precipitated the loss;
7. copies of those documents relied upon by claimant as proof of said loss.

C. Upon receipt of proof of loss, the commission shall review the claim to determine whether it is covered under the program. The burden of proof to establish the loss shall be upon the claimant.

D. The said 30 day period shall begin to run upon publication by the commission of the notice of claim process in the official local journal for legal notices or the print publication with the highest circulation in the area serviced by the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:630 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:511 (February 2011).

§205. Appeal Procedure

A. Any decision of the commission to deny or grant a claim for payment from the fund may be appealed to the commission by the licensee or claimant by seeking an adjudicatory hearing to have said decision reconsidered by the commission in accordance with Chapter 13 of Title 49 of the Louisiana Revised Statutes, as well as all subsequent appeals therefrom, provided said appellant files with the commission a written notice of appeal within 30 days of the mailing of the decision of the commission to the affected party.

B. The notice of appeal shall contain an expressed statement of each and every basis upon which said appeal is sought and the hearing to consider same shall be limited accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:630 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:511 (February 2011).

§207. Subrogation

A. When a claim is paid by the commission from the fund, the claimant, by accepting said payment, subrogates his rights to the commission up to the full amount of payment.

B. Any recovery for reimbursement to the fund shall include interest computed at the U.S. Treasury two-year note coupon rate as published in the Wall Street Journal on the date of the claim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Louisiana Agricultural Commodities Commission, LR 35:631 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:511 (February 2011).

§209. Reimbursement Limitations

A. When any loss is or may be covered by other insurance or bond, the other insurance or bond is primary and the commission shall require the claimant to exhaust his remedies as to the other insurer before considering the payment of the claim.

B. After all other remedies are exhausted, claimants shall be entitled to recover the full amount of claims filed against the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:512 (February 2011).

§211. Pending Litigation or Arbitration; Stay of Claims

A. Where the commission finds that litigation is pending, which could determine whether payment of a claim is due or to whom payment of a claim is due, the claim in question may be stayed until the judgment in said litigation has become final and definitive. The commission shall give notice of the stay to any claimants whose claims have been stayed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:512 (February 2011).

§213. Violations

A. Providing false information to the commission by a claimant or licensee regarding a claim for reimbursement from the fund is a violation of this Subchapter, if the person providing the information knew or should have known the information was false.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:512 (February 2011).

§215. Adjudicatory Hearings

A. Findings of violations and imposition of penalties may be made only by a ruling of the commission based upon

an adjudicatory proceeding held in accordance with the provisions of the Administrative Procedure Act.

B. Whenever the commissioner has any reason to believe that a violation of R.S. 3:3410.2, or of any rules and regulations adopted pursuant to this Part has occurred, the commissioner may present the alleged violations to the commission for a determination.

C. A hearing officer shall be appointed by the office of the attorney general to preside over the hearing.

D. Notice of the alleged violation, the date of the adjudicatory hearing, and the conduct of discovery shall be as provided in the Administrative Procedure Act.

E. The ruling of the commission shall be in writing and provided to the person charged with the violation, as provided by the Administrative Procedure Act.

F. Any appeal from a ruling of the commission shall be in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:512 (February 2011).

§217. Civil Penalties

A. Any claimant or licensee who has been found in an adjudicatory hearing to be in violation of the provisions of this Subchapter shall be subject to the following civil penalties.

B. Any claimant or licensee who knew or should have known that he was providing the commission with false information regarding a claim may be denied payment of the claim on that basis.

C. Any claimant or licensee who knew or should have known that he was providing the commission with false information regarding a claim, or regarding any other matters pertaining to the fund, shall be subject to a maximum civil penalty of \$1,000 for each violation. Each day the false information is with the commission without correction shall be considered a separate violation.

D. Any licensee who intentionally refuses or fails to collect the assessment or refuses to remit the collected assessment to the commission shall be subject to a maximum civil penalty of \$1,000 for each violation. Each day the assessment is not collected shall be a separate violation. Each day the collected assessment is not remitted to the commission shall be a separate violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 35:631 (April 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:512 (February 2011).

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Commissioner

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